TS Land Management Sdn Bhd v Pengarah, Pejabat Tanah dan Galian Shah Alam Selangor Darul Ehsan

HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO 24–744–06 OF 2015
AKHTAR TAHIR J
17 FEBRUARY 2016

Civil Procedure — Originating summons — Intitulement of originating summons — Intitulement of originating summons mentioned provisions of the National Land Code — Prayers in originating summons unclear — No mention of how parties were connected — Whether fit case to be summarily struck out — Rules of Court 2012

In this originating summons ('OS'), the intitulement mentioned several provisions of the National Land Code ('the NLC') relating to the general powers of the Registrar of Land and the land administrator. However, the prayers asked for in the OS were unclear. In the first prayer, the plaintiff sought a declaration from the court to direct the defendant to accept any instrument under s 292 of the NLC without giving further details of the transaction or the land. In the second prayer, the plaintiff sought a court order directing the defendant to accept Form 14A for a transfer of land. There was no mention how the parties were connected to the plaintiff.

Held, dismissing the originating summons with costs of RM3,000:

(1) There were obvious and glaring flaws in the OS. The most obvious being that there was no nexus between the intitulement and the prayers asked for. The importance of the intitulement could not be downplayed based on O 7 r 2 of the Rules of Court 2012 ('the ROC 2012') (see para 7).

(2) There was also no obvious link between the plaintiff and the parties on whose behalf the plaintiff was making this application. This gave rise to the issue of whether the plaintiff had a locus in filing this OS. This was a fit case to be summarily struck off under O 18 r 19 of the ROC 2012 under any of the sub clauses as showing no cause of action and being frivolous and vexatious and an abuse of the process of court (see para 8).

[Bahasa Malaysia summary

Dalam saman pemula ini ('SP'), intitulemen menyatakan beberapa peruntukan Kanun Tanah Negara ('KTN') berkaitan kepada kuasa am Pendaftar Tanah dan Pentadbir. Walau bagaimanapun, permohonan-permohonan yang dipohon di dalam SP adalah tidak jelas.

Dalam permohonan pertama, plaintif memohon perisytiharan daripada mahkamah untuk mengarahkan defendan bagi menerima apa-apa instrumen di bawah s 292 KTN tanpa memberi apa-apa butir lanjut mengenai transaksi tersebut atau tanah tersebut. Dalam permohonan kedua, plaintif memohon perintah mahkamah mengarahkan defendan untuk menerima Borang 14A bagi pemindahan tanah tersebut. Tidak dinyatakan bagaimana pihak-pihak adalah berkait dengan plaintif.

Diputuskan, menolak saman pemula dengan kos sebanyak RM3000:

(1) Terdapat kecacatan jelas dan menonjol dalam SP tersebut. Yang paling jelas adalah bahawa tidak terdapat neksus di antara intitulemen dan permohonan-permohonan yang dipohon. Kepentingan intitulemen tidak boleh dipandang ringan berdasarkan A 7 k 2 Kaedah-Kaedah Mahkamah 2012 ('KKM') (lihat perenggan 7).

(2) Juga tidak terdapat hubungan yang jelas di antara pihak-pihak bagi pihak yang mana plaintif membuat permohonan ini. Ini membangkitkan kepada isu sama ada plaintif mempunyai locus dalam memfailkan SP ini. Ini adalah kes wajar untuk dibatalkan dengan ringkas di bawah A 18 k 19 KKM di bawah mana-mana sub klausa sebagai menunjukkan tiada kausa tindakan dan remeh dan menyusahkan dan penyalahgunaan proses mahkamah (lihat perenggan 8).]

Notes

For cases on originating summons in general, see 2(4) *Mallal's Digest* (5th Ed, 2015) paras 6336–3427.

Legislation referred to

National Land Code ss 15, 166(c), 168, 175, 292, 293, 294, 295, 297, 298, 299, 306, 418, Form 14A

Rules of Court 2012 O 7 r 2, O 18 r 19

Charanjit Singh (Mariadass Lock & Ainuddin) for the plaintiff.
Nik Haizi Azlan bt Nabidin (Selangor State Legal Advisor's Office) for the defendant.

Akhtar Tahir J:

[1] The intitulement to the originating summons mentions several provisions of the National Land Code ie ss 15, 166(c), 168, 175, 292–295, 297–299, 306 and 418.

[2] All the provisions of the National Land Code stated in the intitulement besides s 418 relates to the general powers of the registrar of land and the land administrator. These powers relate to issues of title in continuation and

instruments capable of being registered and the procedure thereof. A

[3] The prayers asked for in the originating summons however are unclear. The first prayer seeks a declaration from the court to direct the Administrator of Land and Mines Shah Alam Selangor ('the defendant') to accept any instrument under s 292 of the NLC without giving further details of the transaction or the land. B

[4] The second prayer is seeking order from court directing the defendant to accept transfer Form 14A for a transfer of land from Maika Holdings to Lee Chee How and Lee Chee Jieh. There is no mention how are this parties are connected to the plaintiff which is TS Land Management Sdn Bhd. C

[5] The third prayer is similarly seeking order from the court directing the defendant of accepting the transfer Form 14A from Maika Holdings to MC Client Management Service Sdn Bhd. D

[6] The other prayers are related to the two above transfers and seeking order from the court directing the defendant from carrying out inquiries as to the whereabouts of the original title deeds to the land. E

[7] There are obvious and glaring flaws in the originating summons filed. The most obvious being that there is no nexus between the intitulement and the prayers asked for. The importance of the intitulement cannot be downplayed as is obvious from reading of the Rules of Court 2012 more specifically O 7 r 2 of the rules which is a worded in a mandatory language. Order 7 r 2 of the Rules of Court 2012 reads as follows: F

> 2 Forms of originating summons (O 7 r 2)
>
> (1) Every originating summons shall be in Form 5 or 6 whichever is appropriate. G
>
> (1A) *Every originating summons shall state in its intitulement any provision of these Rules and any provision of any written law under which the Court is being moved.*
>
> (2) The party taking out an originating summons, other than an ex parte originating summons, shall be described as a plaintiff, and the other parties shall be described as defendants. H
>
> (3) The party taking out an ex parte originating summons shall be described as the applicant.

[8] There is also no obvious link between the plaintiff and the parties on whose behalf the plaintiff is making this application. This give rise to the issue of whether the plaintiff has a locus in filing this originating summons. This is in fact a fit case to be summarily struck off under O 18 r 19 of the Rules of Court 2012 under any of the sub clauses as showing no cause of action and I

being frivolous and vexatious and an abuse of the process of court.

[9] The flaws apparent on the originating summons cannot be corrected by explanation and facts affirmed in the supporting affidavit. Here even the supporting affidavit is unclear as to what is the actual grievance of the plaintiff which has led to the filing of this originating summons.

[10] The only other provision of the National Land Code which is stated in the originating summons and that merits some consideration is s 418 of the NLC which deals with appeals s 418 states as follows:

> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
>
> (3) In this section 'decision' includes any act, omission, refusal, direction or order.

[11] Before this provision is applicable there must have been a decision made which includes an overt act or omission. In this case from the supporting affidavit there are no facts stated that a decision has been made. What had transpired was a meeting with the representative of the plaintiff and his counsel had met the legal adviser of the defendant where they were informed about the necessity to produce the original title deed. This could not be termed as a decision. The plaintiff should have formally applied for direction from the land administrator or the Registrar of Land.

[12] The application of s 418 in this case was totally misconceived and premature.

[13] For all the above reasons I dismissed the plaintiff's originating summons with a cost of RM3,000.

Originating summons dismissed with costs of RM3,000.

Reported by Afiq Mohamad